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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/575,557	08/24/2007	Charles Edward Bright	02838	8935

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EXAMINER
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DANG, PHONG SON H

ART UNIT	PAPER NUMBER
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3773

NOTIFICATION DATE	DELIVERY MODE
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06/10/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/575,557	<b>Applicant(s)</b> BRIGHT, CHARLES EDWARD	
	<b>Examiner</b> SON DANG	<b>Art Unit</b> 3773	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20, 23, 24, 26, 27 and 29 is/are rejected.
- 7) ☒ Claim(s) 21, 22, 25, 28 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The amendment filed 02/23/2010 has been entered. Claims 21-30 have been added. Claims 1-30 are pending in the application.

#### ***Claim Objections***

2. Claim 1 is objected to because of the following informalities: In claim 1, line 9, the phrase "part closed portion", should it be "partially closed portion"? Appropriate correction is required.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 11, 15-18, 20, 24, 26, 27 and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,486,185 to Freitas et al. (Freitas).

In Regards to claims 1-6, 11, 15-18, 20, 24, 26, 27 and 29:

Freitas teaches:

An applicator comprising a barrel (112, Fig. 4) portion and a handle portion (102, Fig. 4) attached to the barrel portion, said barrel portion comprising means (126, Fig. 4) for holding a surgical clip (114, Fig. 8) and said handle comprising trigger means (140, Fig. 4) said trigger means being operative to effect closure of a surgical clip held within said barrel portion by movement of said trigger means from a first position to a second position, at which second

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position said applicator is operative to effect closure of said clip, and in which said trigger means is provided with a visual indicator means (where 164 is position, Fig. 4) indicative of an intermediate trigger position at which intermediate position said surgical clip held in said barrel portion is closed to a part closed position (pulling the trigger when the circular locking slot passed inside the handle, then it is a half way closed of the clip), said visual indicator means defining an elongate visual indicator line (the element 164 is made out of lining groove from the trigger 140, Fig. 4) that extends a substantial distance over the trigger means (140, Fig. 4) to provide a visual indication even when the trigger means is being gripped by one or more of the digits of a users hand (the handle is capable of being grip with more than one digits without blocking element 164). Which said visual indication indicator means comprises an indentation (opening, Fig. 4) on said trigger means. Which said visual indication indicator means comprises a reduced (opening, Fig. 4) section of said trigger means. Which said visual indication indicator means comprises groove (opening, Fig. 4) means in said trigger means. Which said groove means comprises means for engaging (162, Fig. 4) with a removable stop means (170, Fig. 4) said removable stop means being co-operative with a portion of said handle portion to prevent movement of said trigger means (140, Fig. 4) past a predetermined position. Groove means is present on both sides of said trigger means. The handle portion (Fig. 4) includes a recess (where the trigger goes in when squeezed, Fig. 4) the trigger means being pivotally mounted (with 142, Fig. 4)

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within said handle portion to be moveable within said recess when said trigger means is operated and in which the trigger means is dimensioned to have minimal clearance between itself and the recess edges over substantially the whole pivotal movement of the trigger means (Figs. 1-4). A medical appliance comprising: a barrel (112, Fig. 4); a handle (102, Fig. 4); said barrel including a distal holder (126, Fig. 4) for a surgical clip (114, Fig. 8); said handle including a trigger (140, Fig. 4) that is operative to effect closure of the surgical clip (114, Fig. 8) from a first position to a second position; said trigger in said second position effecting full closure of the surgical clip; said trigger having a visual indicator line (the element 164 is made out of lining groove from the trigger 140, Fig. 4) that extends over a visual surface of the trigger and that is illustrative of an intermediate trigger position between said first and second positions; said trigger at said intermediate position maintaining said surgical clip at a partially closed position; said handle includes an elongated recess (where the trigger being squeezed in, Fig. 4); said trigger being pivotally mounted within the handle to be movable within the recess when the trigger is operated; and an elongated removable stop member (170, Fig. 4) that is selectively engageable with said visual indicator line (the element 164 is made out of lining groove from the trigger 140, Fig. 4) and co-operative with an outer surface of said handle (102, Fig. 5) to prevent movement of said trigger (140, Fig. 4) past a predetermined position. Wherein the visual indicator line (the element 164 is made out of lining groove from the trigger 140, Fig. 4) is defined by at least one elongated groove (160, Fig.

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4) for receiving the elongated removable stop member (170, Fig. 4). A pair of elongated grooves (groove 160 is made out of lining groove from the trigger 140, therefore looking from both sides of the trigger, we can see groove 160, Fig. 4) on respective opposed sides of the trigger. Wherein the visual indicator line (the element 164 is made out of lining groove from the trigger 140, Fig. 4) is defined by groove means (160, Fig. 4) for receiving the elongated removable stop member (170, Fig. 4), said elongated removable stop member (170, Fig. 4) having an engaged position that enables movement of said trigger (140, Fig. 4) but prevents movement of said trigger past said predetermined position, and a removed position (element 170 is capable of being taking out) that enables the trigger to move past said predetermined position.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freitas in view of US Patent No. 5,137,198 to Nobis et al. (Nobis).

In Regards to claims 7-9:

Freitas teaches:

An applicator as claimed in claim 6 (see rejection of claim 6 above). The U shaped member comprises spring steel (Col. 8, lines 30-50).

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Freitas fails to teaches:

Stop means comprises a U shaped member which is designed in a first locking position to sit within said groove means and to protrude from said groove means to form said stop means. U shaped member comprises means for gripping by a surgeon to effect removal of said U shaped member from said trigger means enabling movement of said trigger means past said predetermined position.

Nobis teaches:

Stop means comprises a U shaped member (5, Fig. 1) which is designed in a first locking position to sit within said groove means (where 94 is, Fig. 4) and to protrude from said groove means to form said stop means. U shaped member (5, Fig. 1) comprises means for gripping by a surgeon (where 134, Fig. 1 ) to effect removal of said U shaped member from said trigger means enabling movement of said trigger means past said predetermined position (the U shaped member is capable of being removed from the trigger or handle for element 3 to be fully closed up with element 4, Fig. 4).

It would have been obvious to one of ordinary skill in the art at the time of the invention to substitute the stop means of Nobis into Freitas in order to enhance the stability of the stop means with the trigger and the handle of the medical device.

7. Claims 10, 12-14, 19 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Freitas in view of US Patent No. 5,902,320 to Matsutani et al.

(Matsutani)

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In Regards to claims 10, 12-14, 19 and 23:

Freitas teaches:

An applicator as claimed in claim 1 (see rejection of claim 1 above). A feedback pressure as a clip is being moved from an open to a half closed position this feedback pressure providing a tactile sense to the surgeon which when combined with the visual indication provides additional information on the position of the clip (when squeezing the trigger, the user would feel the clip being closing on the object being closed).

Freitas fails to teach:

The trigger means comprises two or more colors arranged, changes in surface texture or change in thickness to identify a specific position of the trigger means.

Matsutani teaches:

Using color code to identify the position of the medical device.

It would have been obvious to one of ordinary skill in the art at the time of the invention to employ color code into Freitas in order to enhance the accuracy of the surgical procedures. Even though Matsutani is silent on using the texture or thickness for identify the positions of medical devices but it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the handle to have different color codes, different surface textures or different thickness in order to feel and differentiate the positions of the of the medical devices in order for better accuracy of applying or delivering medical devices during a procedure.



***Allowable Subject Matter***

8. Claims 21, 22, 25, 28 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

9. Applicant's arguments filed 02/23/2010 have been fully considered but they are not persuasive. The applicant argued that on pages 9-12 of the Remarks that the amendment of "visual indicator means defining an elongate visual line" and the "elongate removable stop member" overcome elements 164 and 170 of the prior art of Freitas in US 5,486,185. The examiner appreciate the applicant trying to clarify the invention and the examiner understand the invention but it is not persuasive because as describing in the rejection above, the claim language is still rejectable over the prior art of Freitas. Freitas disclosed the structural elements AS CLAIMED. In regards to the elongate visual indicator line, please see the rejection above. In regards to the argument that the visual indicator of Freitas, element 164, disappeared when squeezed in the recess of the handle, that indicate the trigger has been squeezed substantially half way into the recess of the handle and that also indicative of the clip being partially deployed. The examiner has indicated a few objected claims. The examiner suggest that the applicant incorporate more structural into the independent claims in order to overcome the prior arts.

***Conclusion***

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SON DANG whose telephone number is (571)270-5809 or email address at [son.dang@uspto.gov](mailto:son.dang@uspto.gov). The examiner can normally be reached on Monday-Friday 7:30 AM - 5:00 PM EDT.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. D./

Examiner, Art Unit 3773

/Darwin P. Erezol

Primary Examiner, Art Unit 3773